

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Time Warner Cable Inc.)	CSR 7150-E, CSR-7151-E & CSR 7535-E
)	
Petition for Determination of Effective)	
Competition in Twenty-Three Missouri and Kansas)	
Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: March 25, 2008

Released: March 26, 2008

By the Associate Bureau Chief, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Time Warner Cable Inc. ("Time Warner"), hereinafter referred to as "Petitioner," has filed with the Commission three petitions pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission's rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as "Communities." Petitioner alleges that its cable system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act")¹ and the Commission's implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and Dish Network ("Dish"). Petitioner additionally claims to be exempt from cable rate regulation in the communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission's rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the Petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and Time Warner indicates that the program offerings are available on the websites of both DIRECTV and Dish, and we have reviewed their websites and confirmed that their program offerings meet the test.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise

⁶47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petition CSR 7150-E at 5; Petition CSR 7151-E at 5; Petition CSR 7535-E at 4.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petition CSR 7150-E at 6; Petition CSR 7151-E at 6; Petition CSR 7535-E at 5.

¹²*See* Petition CSR 7150-E at 6; Petition CSR 7151-E at 6; Petition CSR 7535-E at 6.

¹³*See* Petition CSR 7150-E at 7; Petition CSR 7151-E at 7; Petition CSR 7535-E at 6.

area. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a zip code plus four basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

¹⁴ See Petition CSR 7150-E at 8; Petition CSR 7151-E at 7-8; Petition CSR 7535-E at 7.

¹⁵ Petition CSR 7150-E at 8; CSR Petition 7151-E at 8; CSR Petition 7535-E at 7.

¹⁶ Petition CSR 7150-E at 8 and Exhibit B; CSR 7151-E at 8 and Exhibit B; CSR 7535-E at 8 and Exhibit C.

¹⁷ 47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Time Warner Cable Inc. ARE **GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Nancy Murphy
Associate Bureau Chief, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSRs 7150-E, CSR-7151-E & CSR 7535-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

CSR 7150-E

Communities	CUIDS
Bonner Springs	KS0084
Edwardsville	KS0096
Leavenworth	KS0077

CSR 7151-E

Communities	CUIDS
De Soto	KS0081
Gardner	KS0082

CSR 7535-E

Communities	CUID(S)
Belton	MO0073
Claycomo	MO0517
Ferrelview	MO0830
Independence	MO1039
Glenaire	MO0475
Kansas City	KS0045
Kansas City	MO1123
Lansing	KS0260
Leavenworth	KS0724
Lee's Summit	MO0072
Liberty	MO0364
Lone Jack	MO1127
Parkville	MO0126

Pleasant Valley	MO0476
Smithville	MO0197
Tracy	MO0443
Weatherby Lake	MO0136
Weston	MO0115

ATTACHMENT B

CSRs 7150-E, CSR 7151-E & CSR 7535-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

CSR 7150-E

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
Bonner Springs	KS0084	25.23%	2592	654
Edwardsville	KS0096	17.47%	1568	274
Leavenworth	KS0077	17.06%	12035	2053

CSR 7151-E

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
De Soto	KS0081	28.75%	1642	472
Gardner	KS0082	21.31%	3307	705

CSR 7535-E

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
Belton	MO0073	25.45%	7945	2022
Claycomo	MO0517	17.45%	596	104
Ferrelview	MO0830	28.15%	302	85
Independence	MO1039	20.68%	47390	9801
Glenaire	MO0475	20.55%	219	45
Kansas City	KS0045	21.03%	53597	11276
Kansas City	MO1123	15.65%	183981	28802++
Lansing	KS0260	17.21%	2435	419

Lee's Summit	MO0072	17.27%	26417	4562
Liberty	MO0364	20.83%	9511	1981
Lone Jack	MO1127	22.77%	202	46
Parkville	MO0126	15.63%	1510	236
Pleasant Valley	MO0476	20.78	1328	276
Smithville	MO0197	30.33%	2067	627
Tracy	MO0443	22.78%	79	18
Weatherby Lake	MO0136	16.71%	700	117
Weston	MO0115	35.80%	676	242

*CPR = Percent of competitive DBS penetration rate.

++ = (25,984 DBS Subscribers + 2,818 Everest Connections Subscribers = 28802). (Time Warner combines the DBS and Everest subscribers to establish that MVPDs other than the largest MVPD satisfies the 15 percent penetration rate required under the competing provider test).

ATTACHMENT C

CSR 7535-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
Independence	MO1039	47390	24	5.06%
Leavenworth	KS0724	23071	112	0.48%
Lone Jack	MO1127	202	12	0.059%